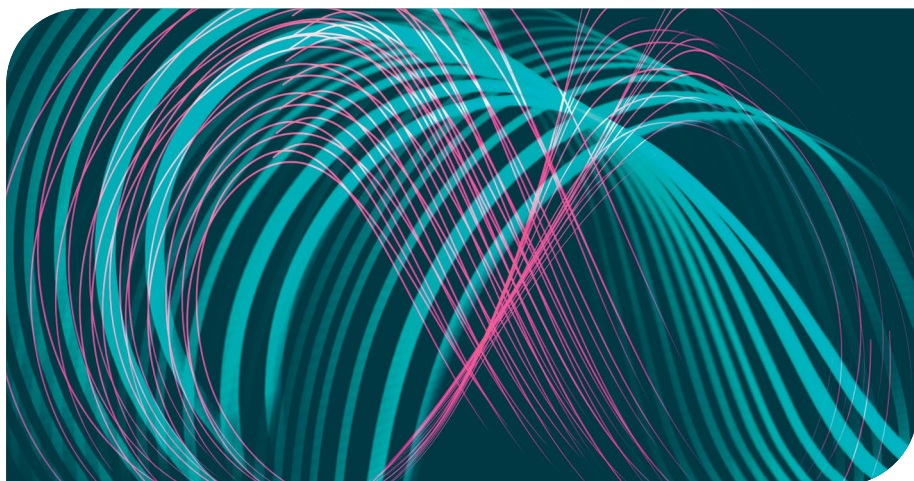


Superannuation Solutions

Edition 26



Welcome

Welcome to the latest edition of our Superannuation Solutions Newsletter.

In this edition we unpack the Federal Government's latest announcement on the proposed 15% tax for super balances over \$3 million, offering clarity on what's changing and what it means for members. We also explore the ATO's new ruling on non-arm's length expenses, highlighting what's been clarified, and what remains uncertain. With Payday Super legislation now introduced, we break down what employers need to know ahead of the July 2026 start date. Plus, we offer practical guidance on valuing assets in SMSFs, especially for property and unlisted investments.

We hope you find this newsletter informative. Should you have any questions in relation to how these changes may impact you, please contact one of our SMSF Specialists.

Important Dates

28 October 2025

Deadline for making SGC contributions for the September 2025 quarter

31 October 2025

Due date for lodgement of the first annual return of many new SMSFs

28 November 2025

Due date to lodge and pay SGC charge statement if SGC contributions not made for the September 2025 quarter

Government announces major changes to super tax

In a press release dated 13 October the Federal Treasurer announced major changes to the proposed extra 15% tax on the super earnings of members whose total super balances (TSB) are over \$3m.

The details of the changes will depend on legislation which is not yet available, but the major changes are:

- The introduction of the new tax will be delayed to first apply to super fund earnings in the 2026-27 tax year. The new tax was originally proposed to apply from 1 July 2025.
- The new tax will be an additional 15% on super fund earnings where a member's TSB is over \$3m and an additional 25% (the first 15% plus 10%) where the TSB is over \$10m. The original proposal was a single threshold of \$3m.
- The ATO will advise funds of members whose TSBs are over the \$3m threshold and request the fund to calculate the member's "earnings" based on ATO guidance.
- "Earnings" will be "based on the fund's taxable income". Most importantly, unrealized gains will be excluded from the earnings calculation.
- The \$3m and \$10m thresholds will be indexed by \$150,000 and \$500,000 increments respectively.

Most super members with balances over \$3m have retirement phase pensions in their super funds. Although income on retirement phase pension accounts is generally exempt from income tax, the new additional tax will apply to earnings on these pension accounts.

Although the original proposal included unrealized gains, it only applied to gains arising after 1 July 2025. It seems that under the new rules, gains realized after 1 July 2026 but accrued before that date will be caught.

Example:

At 30 June 2027 Gustav has a total super balance (TSB) of \$12m. So:

- $(\$12m - \$3m) / \$12m = 75\%$ of his TSB is over \$3m, and
- $(\$12 - \$10) / \$10m = 20\%$ of his TSB is over \$10m.

The ATO advises his super fund and the fund calculates his share of earnings excluding unrealized gains to be \$600,000.

Gustav will have a liability to pay
 $\$600,000 \times 75\% \times 15\% + \$600,000 \times 20\% \times 10\% = \$79,500$

Treasury will consult on how the changes will be implemented in relation to defined benefit super interests, and the existing exception for some judges will be extended to improve consistency across jurisdictions.

The Government expects to introduce legislation as soon as possible in 2026.

At this stage we do not recommend that any action be taken until the legislation has passed. Please contact your Nexia adviser if you want to discuss how these changes may impact your situation.

Payday super legislation introduced

In earlier issues we have outlined the Federal Government's proposal to amend the super guarantee law so that compulsory super guarantee (SG) contributions will be required to be made by employers at the same time as wages are paid. The legislation to implement this has now been introduced into Parliament, with the new rules to apply from 1 July 2026.

Currently an employer is required to make compulsory SG contributions so as to reach each employee's super fund by the 28th day after the end of each quarter. If this deadline is not met, a non-tax deductible SG charge is imposed on the employer. The rate of compulsory super contributions has been 12% since 1 July 2025, broadly based on ordinary time earnings and including salary sacrificed amounts.

Under the new rules, compulsory super contributions will be required to reach each employee's super fund within 7 business days of the day on which the relevant wages are paid (the Qualifying Earnings or QE day). Super contributions made outside the 7 day deadline will still be counted to reduce any SG charge as long as they are made before the ATO raises a SG charge assessment. In the case of such late contributions the employer will also have to pay a notional earning component.

The deadline is to be extended to 20 business days from the QE day for new employees and the first contribution to a particular super fund, to cover the situation where an employee changes super funds.

The ATO may raise a SG assessment based on information received from employers and super funds. An assessment will include notional earnings components and an administrative uplift at a default level of 60%. Employers can make a voluntary disclosure of failure to make adequate contributions, which may lead to a reduction in the administrative uplift.

Eligible contributions made within 12 months before the QE day can also be applied to reduce super guarantee charge, provided they have not been applied for any other QE day.

Under the new rules, on time and late contributions, as well as the SG charge itself, will be tax deductible.

The concept of a maximum contribution base (MCB) is to be retained, but will be calculated as an annual limit instead of the present quarterly limit. It will be calculated as:

Concessional contributions cap x 100 / super guarantee charge percentage

So if the annual limit had applied to the 2025-26 tax year, the current year's MCB would be

$\$30,000 \times 100 / 12\% = \$250,000.$

Currently large APRA funds provide contribution data to the ATO, which enables the ATO to match wages reported by employers through single touch payroll with amounts received by large funds, and to detect missing contributions. There has been no information from Treasury on how SMSFs might be affected by these changes and what contributions reporting might be required of them. Anecdotally, it seems that a large number of SMSFs are not maintained on any online platform, which could make contributions reporting difficult.

Preparing for the commencement of payday super will certainly involve a lot of work for employers, clearing houses, super funds and advisors. Please contact your Nexia advisor if you need help in meeting the 1 July 2026 deadline.



ATO ruling clarifies aspects of non-arm's length expense rules

The ATO has recently released Legislative Companion Ruling 2021/2 which clears up some issues relating to non-arm's length expenses in super funds, but leaves other questions unanswered.

NALI and NALE

For many years the income tax law has contained provisions to prevent income being diverted into super funds where it would be taxed at the concessional rate of 15%. Broadly, this "non arm's length income" or NALI arises where the parties were not dealing with each other at arm's length and the amount of income derived by a super fund is more than might have been expected if the parties had been dealing on an arm's length basis. NALI is taxed at the highest marginal tax rate of 45%.

The other way to inflate a super fund's taxable income is to reduce its expenses. From 1 July 2018 the law has also applied to treat as NALI any income where expenses or losses related to earning that income were less than might have been expected if the parties had been dealing at arm's length. Such expenses have come to be called "non arm's length expenses" or NALE.

The extension of the NALI rules to cover related expenses and losses has been highly controversial and subject to a series of ATO rulings, submissions by accounting bodies and legislative amendments. The ATO has recently provided its view in Legislative Companion Ruling 2021/2.

NALE rules only applies to small funds

While the longstanding NALI rules apply to all super funds, the NALE rules only apply to the expenses of "small complying super funds", which are SMSFs or APRA funds with no more than 6 members.

Types of NALE

The rules make an important distinction between NALE which is in relation to a specific asset or assets of a fund, and NALE which are general expenses, such as accounting fees, actuarial costs, audit fees, management fees and advisor fees.

NALE in relation to specific assets

NALE in relation to a specific asset could include where a fund:

- Acquires an asset for less than its market value,
- Pays less than a commercial rate of interest in a limited recourse borrowing arrangement for an asset, or
- Arranges repairs and maintenance or improvements to a fund property without paying an arm's length price for these services.

NALE in relation to specific assets can have serious consequences. The ATO takes the view that the result is that all income and gains are considered NALI and taxed at 45%. In effect, the asset becomes "tainted" for NALI purposes. This includes any future capital gain from the disposal of the asset. There is no mechanism for fixing this situation. For example, the ATO takes the view that if the purchase of an asset is initially financed at a less

than an arm's length interest rate, all future income and gains from the asset is NALI, and this cannot be corrected by later refinancing at a commercial rate.

When the asset that was acquired for less than its market value is disposed of, the CGT "market substitution" rule may apply so that the capital gain calculation is based on the actual arm's length cost of the asset. However the gain would still be considered NALI.

NALE in relation to general expenses

NALE general expenses present a particular problem. These expenses are typically related to earning **all** the income of the fund, and the rules in their original form would have resulted in all the fund's income being taxed as NALI. The rules now limit the amount of income treated as NALI to twice the difference between the arms length amount of expense and the amount actually incurred. This is in turn capped by the amount of the fund's taxable income less the amount of taxable contributions, to ensure that contributions are not included in NALI.

NALE general expenses are usually only a problem in the year in which they are incurred.

Concession for expenses of managing tax affairs

Although the concession is relegated to a footnote, the ruling states that the NALE rules will not apply to expenditure incurred in relation to the "taxation affairs" of the fund, which would include accounting and audit fees. This is because such expenditure is deductible under a specific section of the tax law (sec 25-5) instead of the general deduction provision.

Capacity in which activities are performed

In deciding whether the NALE rules apply, it may be important to determine if a trustee is acting in their capacity as a trustee or in their personal capacity, because the NALE rules will not apply to services performed in the capacity of a trustee for no remuneration. A trustee's duties would include duties imposed by the fund's trust deed, superannuation legislation and fiduciary duties imposed by the law.

Generally, a trustee of an SMSF is prohibited from receiving remuneration from the fund in any capacity. Where the trustee performs services in their own capacity but is prohibited from receiving remuneration, the NALE rules will not apply.

However, a trustee is permitted to receive remuneration if they:

- Perform duties or services other than in their capacity as trustee,
- Are appropriately qualified and hold all necessary licences to perform the services,
- Perform them in the ordinary course of a business carried on by them or performing similar services for the public, and
- Receive remuneration no more favorable than in an arm's length situation.

The NALE rules **will** apply where the trustee provides services to a fund in their personal capacity, they are able to

receive remuneration for those services, but they receive no remuneration or less than arm's length remuneration.

The ATO will accept a fund paying discounted rates for services provided by a trustee where the fees are paid under a discount policy which applies generally and the trustee is not able to influence the discount policy. Because of the exception for expenses of managing tax affairs, this concession is no longer relevant for accounting fees.

All relevant circumstances must be examined to determine whether a trustee is acting in their personal capacity or not. In its ruling the ATO considers that using skills and knowledge acquired through business, professional and life experience does not of itself indicate that a person is not acting in their capacity of trustee, nor does minor and incidental use of business-related equipment such as computers or phones.

In-specie contributions

From time to time trustees may want to transfer an asset to their fund in a non-arm's length situation where the fund pays less than the market value of the asset and the balance is to be treated as an in-specie contribution to the fund. It is very important that such

arrangements be correctly documented to avoid the NALE rules. Essentially there need to be transfers of two separate assets: one part of the asset which is paid for by the fund and the other part which constitutes the in-specie contribution. Please seek our advice if you have such a transaction in mind.

Problems

A number of problems remain. The rules assume that trustees can determine arm's length market values for assets and services and provide appropriate evidence to the ATO if queried. Determining whether a trustee is acting as a trustee or in their personal capacity may be difficult in some situations.

We recommend that you approach your Nexia advisor if you have any questions in this area.



Valuing assets in SMSFs

An SMSF must record its assets at market value in its annual financial statements. For assets such as listed shares this is easy, but the valuation of property and unlisted investments can be more difficult.

While it is the responsibility of fund trustees to value fund assets, fund auditors must satisfy themselves that the fund has complied with this requirement and that the values adopted are materially correct. As part of our annual compliance work, Nexia seeks to ensure that adequate evidence of market values is passed onto the fund's auditor.

One of the SMSF auditors we refer to has provided useful valuation guidelines for property and unlisted investments, which take into account relevant guidance from the ATO. We have summarized these to assist clients in providing us with the necessary information.

Valuation of Property

The market value of real property assets must be considered each financial year.

The easiest situation is where one of the following applies:

- The property was acquired on an arm's length basis in the 6 months before 30 June;
- The property was sold on an arm's length basis in the 6 months following 30 June, or;
- An agent appraisal or online valuation is available, provided:
 - » the valuation is dated within 3 months of 30 June
 - » the valuation contains comparable sales data, and
 - » where an online valuation is used, the confidence level of the valuation is at least medium level, or the forecast standard deviation percentage is less than 15%.

If this is not possible, then the valuation is more subjective and must draw on several different factors. The ATO requires that the valuation methodology must be fair and reasonable, and should be:

- Based on objective and supportable data;
- Consider all relevant factors and considerations likely to affect the value of the asset;
- Have been undertaken in good faith;
- Use a rational and reasoned process, and
- Capable of explanation to a third party

Relevant factors that might be used to support a valuation in these circumstances include:

- Whether the property has undergone improvements since it was last valued;
- The value of similar properties and recent comparable sales results compiled by the trustee;

- An independent appraisal from a real estate agent dated within 3 months of 30 June which lacks comparable sales data;
- Rates notices from the past two calendar years demonstrating the change in valuation (if consistent with other valuation evidence);
- Suburb, town or region property data specific to residential properties outlining the movement in property values;
- In the case of commercial property, the net yield of the property can also be a factor where the tenants are not related parties.

Valuation of Unlisted Investments

Where the net assets of an entity is the most appropriate way to value the entity (such as a unit trust holding property) evidence of the values of the underlying assets should be provided.

Otherwise, the following may be evidence of the value of the entity:

- Share or unit sales and purchases between unrelated parties within 12 months of 30 June;
- Equity transactions such as capital raisings within 12 months of 30 June, or
- A formal valuation by an independent qualified valuer.

Valuation of Loans

The auditor will need to assess whether the whole amount of the loan is recoverable. Evidence to support this would include:

- Whether the loan has been fully repaid after balance date;
- If the loan is secured, evidence of the security;
- If repayments have been made in accordance with the loan agreement, and
- Financial statements of the borrowing entity.

We would be pleased to provide any information you may need in relation to the valuation of the assets in your SMSF.



Who we are

At Nexia Australia, we're here to help you achieve your goals and plan for future success with bespoke solutions and personalised, practical advice. Equipped with unparalleled experience and expertise in advisory, tax, audit, business strategy, personal wealth services, and strategic thinking, we're the team you can trust to empower you to achieve your objectives and reach new heights.

We specialise in several key industries and cater to a wide range of clients, from small to medium-sized businesses to large private company groups, not-for-profit entities, subsidiaries of international companies, publicly listed companies, and high-net-worth individuals. We've had the privilege of working with market leaders in many sectors of Australian and New Zealand business, and we're here and ready to help you too.

We take pride in being responsive, progressive, and proactive in identifying and implementing the solution to your success.

Contact us

Learn how Nexia Australia can help set you and your organisation up for success. Contact your local Nexia Advisor below to get started.

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